

AG Contract No. KR962264TRN
ADOT ECS File JPA 96-149
Project No. TEA-YUM-0(2)P
TRACS No. 0000YUYUM SL389 01C
Section: East Main Canal Multi-Use Path
8th St. - 21st St.

INTERGOVERNMENTAL AGREEMENT
BETWEEN
THE STATE OF ARIZONA
AND
THE CITY OF YUMA

THIS AGREEMENT is entered into 23 December, 1996,
pursuant to Arizona Revised Statutes, Sections 11-951 through 11-954, as amended,
between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF
TRANSPORTATION (the "State") and the CITY OF YUMA, acting by and through its
MAYOR and CITY COUNCIL (the "City").

I. RECITALS

1. The State is empowered by Arizona Revised Statutes Section 28-108 and 28-112 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has delegated to the undersigned the authority to execute this agreement on behalf of the State.
2. The City is empowered by Arizona Revised Statutes Section 48-572 to enter into this agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this agreement and has authorized the undersigned to execute this agreement on behalf of the City.
3. Congress has authorized appropriations for, but not limited to, the construction of streets and primary, feeder and farm-to-market roads; the replacement of bridges; the elimination of roadside obstacles; and the application of pavement markings.
4. Such project within the boundary of the City has been selected by the City; the field survey of the project has been completed; and the plans, estimates and specifications have been prepared and, as required, submitted to the Federal Highway Administration (FHWA) for its approval.
5. The only interest of the State in the project is in the acquisition of federal funds for the use and benefit of the City by reason of federal law and regulations under which funds for the project are authorized to be expended.

NO. <u>21273</u>
FILED WITH SECRETARY OF STATE
Date Filed <u>12/23/96</u>
<u>Jane Lee Hull</u> Secretary of State
By <u>Vicky Greenwald</u>

6. The City, in order to obtain federal funds for the construction of the project, is willing to provide the State with the City funds to match federal funds in the ratio required or as finally fixed and determined by FHWA.

7. The work embraced in this agreement and the estimated cost are as follows:
Construct Multi-Use Path.

Estimated Project Cost (includes 15% CE)	\$ 922,630.00
Federal Aid Funds @ 80% of \$500,000.00 (CAP)	\$ 400,000.00
City of Yuma Funds	\$ 422,630.00
City of Yuma Funds @ 20% of \$500,000.00	\$ 100,000.00
Five percent (5%) surcharge	\$ 46,132.00
Total City Funds	\$ 568,762.00*

* This includes a 5% surcharge on the total cost as per Local Government Engineer memo of 4 April 1994.

THEREFORE, in consideration of the mutual covenants expressed herein, it is agreed as follows:

II. SCOPE OF WORK

1. The State shall submit a program containing the aforementioned project to FHWA with the recommendation that it be approved for construction.

a. If such project is approved for construction by FHWA and the funds are available for construction of the project, the State with the aid and consent of FHWA will proceed to advertise for, receive and open bids, and subject to the concurrence of FHWA and the City, award the contract, enter into a contract with a firm to whom the award is made for the construction of the project, such project to be performed, completed, accepted and paid for in accordance with the requirements of the Standard Specifications for Road and Bridge Construction of the Highways Division, Arizona Department of Transportation. Further, the State will enter into a Project Agreement with FHWA covering the work embraced in said construction contract and will request the maximum federal funds available.

b. Should unforeseen conditions or circumstances increase the cost of said work required by a change in the extent or scope of the work called for in this agreement, the State shall not be obligated to incur any expenditure in excess of the amount of the City's deposit unless and until so authorized in writing by the City.

2. Prior to the solicitation of bids, the City shall deposit funds with the State in the amount determined by the State to be necessary to match federal funds in the ratio required. Upon completion of the construction contract, the State shall return to the City any part of the funds deposited by the City remaining after City's pro rata share of the cost, as finally fixed and determined by FHWA, has been paid.

3. The City shall acquire, without cost to the State, the necessary right-of-way and hereby certifies that all necessary rights-of-way have been acquired.

4. The City shall remove from the proposed right-of-way all obstructions or unauthorized encroachments of whatever nature, either above or below the surface of the roadway, and hereby certifies that all obstructions and encroachments have been removed therefrom, prior to the start of construction.

5. The City shall not permit or allow any encroachments, except those authorized by permit, upon, or private use of, the right of way. In the event of any unauthorized encroachment or improper use, the City shall take all necessary steps to remove or prevent any such encroachment or use; failing in which the State shall have the right to proceed with the removal or prevention thereof, the cost of such removal or prevention to be borne by the City.

6. Upon completion of construction, the City shall provide for, at its own cost and as an annual item in its budget, proper maintenance, including, but not limited to, signs, and markings necessary for the purpose of regulating, warning and guiding traffic, all in accordance with the requirements of the current edition of the Manual on Uniform Traffic Control Devices for Streets and Highways.

III. MISCELLANEOUS PROVISIONS

1. The State assumes no financial obligation or liability under this agreement. The City assumes full responsibility for the design, plans, specifications, reports, the engineering in connection therewith and the construction of the improvements contemplated, cost overruns and construction claims. It is understood and agreed that the State's participation is confined solely to securing federal aid; that any damages arising from carrying out, in any respect, the terms of this agreement or any modification thereof, shall be solely the liability of the City and that the City hereby agrees to save and hold harmless and indemnify from loss the State, any of its departments, agencies, officers or employees from any and all cost and/or damage incurred by any of the above and from any other damage to any person or property whatsoever, which is caused by any activity, condition, or event arising out of the performance or nonperformance of any provisions of this agreement by the State, any of its departments, agencies, officers and employees, the City, any of its agents, officers and employees, or any of its independent contractors. Costs incurred by the State, any of its departments, agencies, officers or employees shall include in the event of any action, court costs, expenses of litigation and attorneys' fees.

2. The cost of the design, construction and construction engineering work covered by this agreement is to be borne by FHWA and the City, each in the proportion prescribed or as fixed and determined by FHWA as stipulated in this agreement. Therefore, the City agrees to furnish and provide State with City funds in an amount equal to the difference between the total cost of the work provided for in this agreement and the amount of federal aid received.

3. This agreement shall remain in force and effect until completion of the work herein embraced; provided, however, that any provisions in this agreement for maintenance shall be perpetual.

4. This agreement shall become effective upon filing with the Secretary of State.

5. This agreement shall be cancelled in accordance with Arizona Revised Statutes Section 38-511.

6. The provisions of Arizona Revised Statutes Section 35-214 are applicable to this agreement.

7. In the event of any controversy which may arise out of this agreement, the parties hereto agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes Section 12-1518.

8. All notices or demands upon any party to this agreement shall be in writing and shall be delivered in person or sent by mail addressed as follows:

Department of Transportation
Joint Project Administration
205 S. 17th Avenue - 616E
Phoenix, AZ 85007

City of Yuma
City Administrator
3 West 3rd Street
Yuma, AZ 85364

9. Attached hereto and incorporated herein is the written determination of each party's legal counsel that the parties are authorized under the laws of this state to enter into this agreement and that the agreement is in proper form.

IN WITNESS WHEREOF, the parties have executed this agreement the day and year first above written.


CITY OF YUMA

STATE OF ARIZONA
Department of Transportation

By 
JOYCE A. WILSON
City Administrator

By 
PETER L. ENO
Contract Administrator


ATTEST:

By 
CARRIE FASSIL
City Clerk

RESOLUTION

BE IT RESOLVED on this 7th day of October 1996, that I, the undersigned LARRY S. BONINE, as Director of the Arizona Department of Transportation, have determined that it is in the best interests of the State of Arizona that the Department of Transportation, acting by and through the Intermodal Transportation Division, to enter into an agreement with the City of Yuma for the purpose of defining responsibilities for the design, construction and maintenance of a pedestrian path on the East Main Canal, 8th St. - 21st St.

Therefore, authorization is hereby granted to draft said agreement which, upon completion, shall be submitted to the Contract Administrator for approval and execution.


for LARRY S. BONINE
Director

CITY OF YUMA REQUEST FOR COUNCIL ACTION

FOR MEETING OF: December 4, 1996 MOTIONS XX ORDN Adoption

DEPT: Community Development RESOLUTIONS ORDN Introduction

DIVISION: Planning & Neighborhood Services PUBLIC HEARING

TITLE:
APPROVE INTERGOVERNMENTAL AGREEMENT (STATE OF ARIZONA)

SUMMARY RECOMMENDATION:

Approval of Intergovernmental Agreement with State of Arizona (ADOT) concerning the construction of the East Main canal Multi-Use Pathway (CIP # 5.9515 - Phase I) between 8th Street and the Maxey Check Structure/21st Street

BACKGROUND/DISCUSSION/ALTERNATIVES/CONCURRENCE:

The City Council must approve an intergovernmental agreement with the State of Arizona Department of Transportation (ADOT) in order to obtain the use of \$400,000 in Federal Intermodal Surface Transportation Efficiency Act (ISTEA) Enhancement Grant funds which were awarded to the City in October 1994 for the construction of the East Main Canal Multi-Use Pathway.

This project consists of 1.84 miles of ADA accessible pathway with landscaping, security lighting, and an undercrossing of US95/16th Street. The estimated project cost is \$968,762. Based on this estimate, the City will be obligated to provide \$568,762. That amount consists of the City's share of \$522,630, plus a mandatory ADOT reserve for possible change orders. The reserve amount is \$46,132 which is 5% of \$922,630 which is the estimated total cost originally listed in the proposed intergovernmental agreement.

The final cost of this project will not be known until construction bids are solicited by ADOT and the bids are opened. If the construction bids for this project are lower than the current ADOT estimate the City may receive a refund or chose to add extra amenities to the project. If the construction bids for this project are higher than the ADOT estimate then additional funds will be requested from the City. The City can then decide to either provide the additional funds needed or reduce the size of this project to match available funding.

ADOT will act as the construction administrator for this project, and ADOT is planning to solicit bids on this project in January 1997. The construction of this project should start in March 1997.

It is recommended that the City Council approve the attached Intergovernmental Agreement and the expenditure of \$568,762 at this time for the construction of CIP # 5.9515 East Main Canal Multi-Use Pathway Project - Phase I between 8th Street and the Maxey Check Structure/21st Street.

The recommendation has the concurrence of the CIP Manager and the Director of the Public Works Department.

Attachments: Proposed Intergovernmental Agreement with City Attorney Approval Form.

If funds are required, please complete the following: Federal \$ 400,000
State \$ _____; City \$ _____; Other \$ 568,762; Total \$ 968,762
Budgeted \$ _____ Avail for Transfer \$ _____ Contingency \$ _____
Funding for this item is found: Federal funding is being held by Arizona Department Of
Transportation. The City funding is found in th 1996-97 Capital Improvement Program (CIP)
budget under Capital Improvement Program number 5.9515.

FISCAL IMPACT STATEMENT:

Supporting Information/Source Documents: List all material filed in the City Clerk's Office as
backup information for the request.

1. Intergovernmental Agreement between the State of Arizona and the City of Yuma.
- 2.
- 3.

Does supporting information include a contract/agreement/lease? YES X NO

If YES, who will be responsible for routing the contract for signature after Council approval?
Department _____ Clerk's Office X

*Note: If Clerk's Office is to route contract/agreement/lease, please submit original document and
a copy to the Clerk's Office.

APPROVED FOR COUNCIL AGENDA:

City Administrator: Jayce G. Johnson

Date: 11/27/96

REVIEWED BY CITY ATTORNEY: _____

Date: _____

RECOMMENDED BY: Jim McLaughlin

Responsible Department Head

Date: 11/21/96

WRITTEN/SUBMITTED BY: Markus J. Juel

Date: 11-21-96

Approved at the City Council Meeting of:

December 4, 1996
City Clerk: Carrie E. Fossil

APPROVAL OF THE YUMA CITY ATTORNEY

I have reviewed the above referenced proposed intergovernmental agreement, between the DEPARTMENT OF TRANSPORTATION, HIGHWAYS DIVISION, and the CITY OF YUMA and declare this agreement to be in proper form and within the powers and authority granted to the City under the laws of the State of Arizona.

DATED this 5th day of December, 1996.

Steven W. Moore
City Attorney



STATE OF ARIZONA

OFFICE OF THE ATTORNEY GENERAL

1275 WEST WASHINGTON, PHOENIX 85007-2926

TRN Main: (602) 542-1680

Direct: (602) 542-8837

Fax: (602) 542-3646

MAIN PHONE : 542-5025

TELECOPIER : 542-4085

GRANT WOODS
ATTORNEY GENERAL

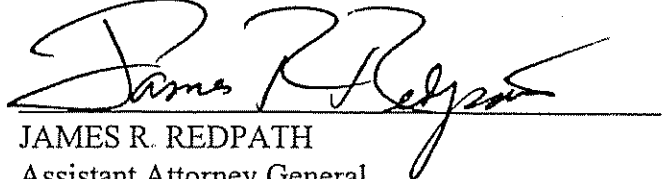
INTERGOVERNMENTAL AGREEMENT
DETERMINATION

A.G. Contract No. KR96-2264TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

DATED December 18, 1996.

GRANT WOODS
Attorney General


JAMES R. REDPATH
Assistant Attorney General
Transportation Section

JRR:et/2735